

Regulation 61-67.1

Requirements for State Water Pollution Control Revolving Fund Loan Assistance

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Statutory Authority:	S.C. Code Sections 48-6-10 through 48-6-70
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Regulation History as Published in State Register			
Date	Document Number	Volume	Issue
June 24, 1998	935	12	6

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I. Introduction

A. Authorization

The Federal Water Pollution Act (92-500) as amended, otherwise known as the Clean Water Act (CWA), sets forth a schedule and mechanism for completing the transition to full State and Local responsibility for construction of Publicly Owned Treatment Works (POTW). To replace the Environmental Protection Agency (EPA) Construction Grants Program, new authority is given to EPA to make grants to capitalize State Water Pollution Control Revolving Funds (SRFs), the primary purpose of which is to provide loans and other financial assistance for the construction of wastewater treatment facilities.

SRF capitalization grants are authorized from Fiscal Year 1989 through Fiscal Year 1994. After the Fiscal Year 1994 funds are spent, the Federal role will no longer include financial assistance to States or Municipalities for wastewater treatment facilities construction. The States and Municipalities will thereafter have the sole responsibility for providing financing to meet the enforceable requirements of the Act.

The 1987 South Carolina General Assembly created the State Water Pollution Revolving Fund, Title 48, Chapter 6. This legislation gives the Budget and Control Board the responsibility for managing the fiscal aspects of the Fund and Department of Health and Environmental Control (DHEC) the responsibility for administering the technical and programmatic portions of the Fund.

B. Objectives

The purpose of the State Water Pollution Control Revolving Fund is to create a financial assistance program, as mandated under the Federal Water Pollution Control Act Amendments of 1987, to:

1. Assist project sponsors in meeting Federal and State mandated wastewater treatment levels and service standards.
2. Provide a long-term source of financing for wastewater treatment needs.
3. Encourage self-sufficiency at the State and Local levels for wastewater financing.
4. Provide affordable financing to eligible project sponsors.

C. Definitions

The following terms as used in these regulations shall have the meaning ascribed to them in this chapter:

1. “Act” means Public Law 92-500 as amended by Public Law 100-4; the “Water Quality Act of 1987.”
2. “Agency” means the United States Environmental Protection Agency.
3. “Board” means the South Carolina Budget and Control Board.
4. “Department” means the South Carolina Department of Health and Environmental Control.
5. “Fund” means the money initially received from capitalization grants pursuant to the Act, all associated State match money, repayments of all principal and interest on loans made from the Fund, interest accruing to the Fund and any leveraged money applied to the Fund.

6. “Loan Agreement” means the agreement or contract made between a project sponsor and the Board which provides for State assistance to the project sponsor and for the repayment thereof by the project sponsor.

7. “Project Sponsor or Loan Recipient” means any county, municipality, intermunicipal, interstate or state agency, or special purpose district, excluding any special purpose districts (e.g. a school, an airport, etc.) whose primary purpose is not wastewater treatment.

D. Eligible Applicants

Any municipality, county, intermunicipal, interstate or state agency, or special purpose district whose primary function is wastewater treatment, is eligible to seek financial assistance from the SRF.

E. Eligible Types of Financial Assistance

All monies within the Fund must be used solely to provide loans and other authorized forms of financial assistance, but not grants. Other forms of financial assistance may include the following:

1. Guarantees—The Fund may be used to guarantee local debt obligations or purchase bond insurance where such actions would improve credit market access or reduce interest rates. Any project receiving this type of assistance must comply with all requirements applicable to projects financed directly by Fund loans. No monies in the Fund may be used to finance a reserve account for a municipal bond issue.

2. Refinancing—The Fund may be used to refinance a local debt obligation at or below market rate when such debt was incurred after March 7, 1985. The project, however, must have complied with all requirements applicable to projects initially financed by Fund loans. Furthermore, where the original debt was in the form of a multi-purpose bond incurred for purposes extending beyond wastewater treatment facility construction, the Fund may provide refinancing only for eligible purposes and not for the entire debt.

F. Eligible Types of Activities

Financial assistance for eligible sponsors is limited to the following uses:

1. Construction of projects for secondary treatment, advanced treatment, or any cost effective alternative to secondary or advanced treatment, new interceptors and appurtenances and infiltration/inflow correction. Up to 20% of the Fund may be used for major rehabilitation or replacement of collectors, provided the collectors are needed to assure the total integrity of the system, or for new collectors in an existing community, where sufficient treatment capacity exists.

2. Implementation of a non-point source pollution control management program. The project must be consistent with plans developed under Section 319 of the Act.

3. Development and implementation of an estuary conservation and management plan. The project must be consistent with plans developed under Section 320 of the Act.

All projects subject to paragraphs 1, 2 and 3 must appear on the State’s annual priority list.

G. Impact of Future Agency Rules and Regulations

Any provision of the State regulations contained herein that is contrary to or inconsistent with subsequent Agency guidance, rules or regulations shall be immediately deemed null and void, and any associated changes shall be addressed through State policy memoranda.

II. Requirements Placed on Loan Recipients

This chapter provides an overview of the primary Federal and State requirements which will apply to recipients of financial assistance from the Fund. As prescribed by the Act, Federal requirements for the Fund largely parallel the Title II Construction Grants Regulations. Additional cross cutting Federal laws and directives will also apply to the Fund's use. The Department will apply most of the construction grant regulations but will streamline those procedures, to the extent permissible, to more appropriately address financing by loans. In addition, the Department will issue guidance for project sponsor's responsibilities under other Federal laws and directives.

Necessary additional requirements and compliance standards will be addressed through separate program guidance. This guidance will identify areas of compliance by subject or requirement, identify the sponsor's role, it's responsibility and the required compliance documentation needed. The State's role in the review and approval process will also be identified.

A. Federal Programmatic Requirements

An overview of the Federal regulations applicable to all loan recipients is presented in this section. Many of the Federal requirements are planning regulations and apply to completion of a facilities plan as has been required under the Agency's construction grants program. A facilities plan must be prepared for all projects, except nonpoint source and estuary projects which will require specific planning.

The facilities plan and final plans and specifications must be approved prior to the submission of an application for construction financing. The cost of preparing a facilities plan and final plans and specifications may be eligible for reimbursement through the loan program once a construction loan is approved. The following summarizes the Federal requirements that must be met for all loan applicants and recipients pursuant to the provisions of the Act.

1. Best Practicable Waste Treatment Technology—Section 201(b) requires that projects apply best practicable waste treatment technology (see CFR 35.2005(b)(7): Definition of BPWTT, 40 CFR 35.2030(b)(2): Facilities Planning);

2. Categories of Need—Section 201(g)(1) limits assistance to projects for secondary treatment, advanced treatment, or any cost-effective alternative, new interceptors and appurtenances, and infiltration—inflow correction. This Section retains the Governor's discretionary set-aside by which a State can use up to 20 percent of its allotment for other projects within the definition of treatment works in Section 212(2), and for certain nonpoint source control and groundwater protection purposes, as defined in Section 319 of the Act and subsequent Agency regulations (40 CFR 35.2015(b)(2)(ii-iv): State Priority System and Project Priority List);

3. Alternative Waste Management Techniques—Section 201(g)(2) requires that alternative technologies be considered in project design (40 CFR 35.2030: Facilities Planning);

4. Infiltration/Inflow—Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration (40 CFR 35.2030(b)(4): Facilities Planning, 40 CFR 35.2120: Infiltration/Inflow);

5. Innovative/Alternative Technology—Section 201(g)(5) requires that applicants study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources (40 CFR, 35.2030: Facilities Planning);

6. Recreation and Open Space Opportunities—Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facilities (40 CFR 35.2030(b)(5): Facilities Planning);

7. Water Quality Management Planning—Section 204(a)(1) and (2) requires that treatment works projects be included in plans developed under Sections 208 and 303(e), (40 CFR 35.2101: Water Quality Management Plans);

8. Sewer Use Ordinance/User Charge System—Section 204(b)(1) requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment works (40 CFR 35.2208: Adoption of Sewer Use Ordinance and User Charge System, 35.2130: Sewer Use Ordinance, 35.2140: User Charge System, and 35.2214: Grantee Responsibilities, 35.2122: Approval of User Charge System and proposed Sewer Use Ordinance, 35.2110: Access to Individual Systems, and 35.2206(a): Operation and Maintenance);

9. Project Performance—Section 204(d)(2) requires that one year after the date of construction the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit (40 CFR 35.2218(c), (d) and (e)(2): Project Performance);

10. Governor's Discretionary Fund—Section 211 provides that major rehabilitation or replacement of collectors is not eligible under the Governor's 20 percent discretionary authority of 201(g)(1) unless the collector is needed to assure the total integrity of the treatment works, or that, for a new collector, adequate capacity exists at the facilities (40 CFR 35.2116 Collection System);

11. Value Engineering—Section 218 assures that treatment systems are cost-effective and requires that projects of over \$10 million include a value engineering review (40 CFR 35.2030(b)(3): Cost-Effectiveness, Facilities Planning, and 35.2114: Value Engineering).

12. Environmental Review—Section 511(c)(1). Under Title VI of the Act, the State must conduct a NEPA (National Environmental Policy Act)-like review (as conducted under the Agency Construction Grants Program) of projects constructed with monies from the Fund program. South Carolina must assure that all treatment works constructed in whole or in part with monies provided from the Fund, will be subject to a NEPA-like review to evaluate the possible environmental impacts, including secondary impacts, associated with such construction. This environmental review requirement is included because the potential exists for undesirable environmental side-effects resulting from inappropriate design or site location, or from the promotion of uncontrolled residential, commercial, or industrial development. These reviews will provide for adequate public involvement. The Department will use the NEPA review process until such time as its own procedures have been developed and approved by EPA.

13. For the environmental assessment review and requirements cited above, the following Federal acts and rules may also apply to the loan project:

1. Archeological and Historic Preservation Act of 1974

2. Executive Order 11990 Protection of Wetlands
3. National Historic Preservation Act of 1966 as amended
4. Executive Order 11988 Floodplain Management
5. Clean Air Act
6. Federal Water Pollution Control Act as amended
7. State Clearinghouse Presidential Executive Order 12372.

Consideration to the above acts, legislation and authority rules must be given during the Environmental Assessment Review.

14. Davis—Bacon Act—Section 513 applies Davis-Bacon labor wage provisions to treatment works construction (see 29 CFR Part 5). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U. S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276 et seq.).

15. Other cross cutting Federal laws and directives as mandated by the Agency that may impact the loan project include, but not limited to, the following:

1. Copeland “Anti-Kickback” Act.
2. Contract Work Hours and Safety Standards Act.
3. Federal Equal Opportunity, Non-Discrimination and Civil Rights Act and Laws.
4. Buy American (Executive Order).

B. State Programmatic Requirements

1. The sponsor is responsible for compliance with:
 - a. The South Carolina Pollution Control Act.
 - b. State guidance issued for procurement, property management and other applicable procedures.
 - c. Laws, rules and regulations and guidance documents governing the planning, design and construction of the project.
 - d. The development and maintenance of records, documents, and procedures to establish adherence to all State issued guidance.
2. The Department will perform site visits and routine inspections of facilities in order to resolve problems, provide technical and administrative assistance, and ensure compliance in all program areas or support any deviations or variances necessary prior to a project compliance audit. The Department will perform interim and final construction inspections to ensure construction consistency and adequacy.

3. The project sponsor will be responsible for the preparation and submission of all data and reports determined necessary by the Department and the Board.

C. Financial Requirements

The following identifies major financial requirements that will apply to all loan recipients. Additional financial requirements and responsibilities governing loans from the Fund will be defined in the loan application package, the loan agreement and specific guidance memoranda as appropriate.

1. Each loan applicant must establish one or more dedicated repayment sources that contain sufficient revenues to operate and maintain the system and cover debt service payments for the duration of the loan. Dedicated sources of revenue may be user charges, special assessments, general taxes, general obligation bonds, revenue bonds or other sources available to the project sponsor.

2. All loan recipients must maintain separate project accounts in accordance with “generally accepted government accounting standards.” Unless otherwise directed by the Board, these standards are defined as those contained in the U. S. General Accounting Office publication “Standards for Audit of Governmental Organizations, Programs, Activities and Functions,” dated 2/27/81.

3. Each loan recipient is required to conduct an annual audit and submit it to the Board. Audit guidelines are set forth in the Single Audit Act of 1984, OMB Circular A-128 and the U. S. General Accounting Office’s “Standards for Audit of Governmental Organization, Programs, Activities and Functions.”

4. Each project sponsor must comply with all terms and conditions set forth in the legally binding loan agreement which will be executed between the loan recipient and the Board before any monies are awarded.

III. Priority, Selection and Application Process

The following represents a general description of the process and procedures involved in applying for a loan from the Fund. Further information will be available through public notices and mass mailings. Instructions and guidance detailing specific requirements will also be provided to potential loan applicants.

1. To be eligible for consideration for a loan in any given year, the project must be on the State’s annual project priority list for that year. Placement on the priority list is dependent upon the project sponsor submitting a complete priority list questionnaire to the Department within the prescribed time frame. Questionnaires are available from the Department or the Board.

2. The priority system for ranking and selecting projects on the annual priority list will be developed by the Department and the Board and will be available for public comment. It should be noted that due to new Agency requirements, readiness to proceed will be a dominant factor in determining which projects on the list will be eligible to apply for loans. Higher ranked projects that are not ready to proceed will lose the opportunity for a loan to lower ranked projects that are ready.

3. Once a project is determined to be a potential loan recipient and the project sponsor has satisfied all technical and programmatic requirements as defined by the Department, the project sponsor will then submit a complete loan application to the Board. Loan applications will be available from the Board or the Department.

4. Project Sponsors fulfilling all programmatic requirements, satisfying all requirements of the financial review, and evidencing a sound ability to repay the financial assistance will be offered a loan.

5. The loan becomes final when the project sponsor enters into a legally binding loan agreement with the Board.

IV. Financial Provisions

A. Loan Policies

Specific loan policies, including but not limited to interest rates, terms, deferments, funding caps, repayment provisions and disbursement requirements will be established by the Board in advance of Fund implementation and made available for distribution to potential project sponsors.

B. Loan Agreements

Prior to awarding any loan, the project sponsor and the Board shall enter into a loan agreement containing, without limitation, the following:

1. The cost of the project, the amount of the loan, the terms of repayment and security for the loan.
2. The specific purpose for which proceeds of the loan may be expended, the requirements and procedures for disbursement of the loan and the duties and obligations imposed upon the loan recipient regarding the construction or completion of the project.
3. The agreement of the loan recipient to impose, collect and, if required to ensure repayment of the obligations according to the terms of the loan agreement, increase user charges, taxes or other dedicated revenue sources identified for the loan repayment.
4. The agreement of the loan recipient to comply with all applicable laws, rules and regulations issued by the Department, the Board or other State, Federal and Local bodies in regard to the financing, construction, operation, maintenance and use of the wastewater facilities project.

C. Loan Delinquency Provisions

Pursuant to authority provided in Section 48-6-70(B) of Title 48 of the 1976 South Carolina Code of Laws, as amended, any failure of the project sponsor to make payment to the Board according to the prescribed repayment schedule will result in the Board requiring the State Treasurer and the Comptroller General to pay the Board the amount of other State aid the local unit may become entitled to until all delinquent payments plus interest have been paid. If the loan recipient is a special purpose district and receives no other State aid, the Board will notify the Controller General to levy, and require the applicable County Treasurer to collect and remit to the Board, a special tax sufficient to cover the delinquent payments plus interest, and, if necessary, to ensure continued repayment of the loan. Additionally, should the loan of any project sponsor be declared delinquent, the Board may also take action to preclude the loan recipient from receiving grant funds or other types of financial assistance available from State agencies, unless otherwise prohibited by law, until such time as all amounts due on the loan have been paid and the loan is declared current.

